

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Anthony Lamar Wright,)	
<i>a/k/a Anthony L. Wright,</i>)	C/A No. 4:16-218-TLW-TER
)	
)	
Plaintiff,)	REPORT AND RECOMMENDATION
)	
vs.)	
)	
Dr Darby, in his individual capacity,)	
Dr. Randolph, in her individual capacity,)	
Dr. Grant, in his individual capacity,)	
Sheriff Strickland, in his individual capacity,)	
Sheriff Koon, in his individual capacity,)	
Sheriff Leon Lott, in his individual capacity,)	
Correct Care Solutions,)	
Southern Health Partners,)	
Sgt. Holley,)	
Dr. Chaves, in his individual capacity,)	
Charleston County Detention Center,)	
Sheriff Al Cannon,)	
Nurse Herndon, in her individual capacity,)	
)	
)	
Defendants.)	
)	

PROCEDURAL BACKGROUND

Plaintiff, proceeding *pro se*, filed this action under 42 U.S.C. § 1983¹ on January 20, 2016, alleging a violation of his constitutional rights. Plaintiff filed an amended complaint on March 16, 2016. (Doc. # 13). Plaintiff is/was housed at the Alvin S. Glenn Detention

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the district judge.

Center. At all times relevant to the allegations in the amended complaint as to Defendants Southern Health Partners, Inc. and Trinity Herndon, LPN, Plaintiff was housed at the Colleton County Detention Center. (CCDC). On August 26, 2016, Defendants Southern Health Partners and Nurse Herndon filed a motion for summary judgment along with a memorandum and exhibits. (Doc. #92). As the Plaintiff is proceeding *pro se*, the court issued an order on or about August 29, 2016, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the motion for summary judgment procedure and the possible consequences if he failed to respond adequately. On September 27, 2016, Plaintiff was given an extension to file a response to the motion for summary judgment until November 3, 2016, or his case may be dismissed for failure to prosecute pursuant to Rule 41 of the Federal Rules of Civil Procedure. Plaintiff failed to file a response. (Doc. #116).

RULE 41(B) DISMISSAL

A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied, 493 U.S. 1084 (1990), and Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant to Rule 41(b), the court is required to consider four factors:

- (1) the degree of plaintiff's responsibility in failing to respond;
- (2) the amount of prejudice to the defendant;
- (3) the history of the plaintiff in proceeding in a dilatory manner; and,

(4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

In the present case, the Plaintiff is proceeding pro se so he is entirely responsible for his actions. It is solely through Plaintiff's neglect, and not that of an attorney, that no responses have been filed. Plaintiff has not responded to the motion for summary judgment by Defendants Southern Health Partners and Nurse Herndon or the court's orders requiring him to respond. No other reasonable sanctions are available. Accordingly, it is recommended that this action be dismissed pursuant to Fed. R. Civ. Proc. 41(b) as to these two Defendants.

CONCLUSION

Based on the above reasoning, it is RECOMMENDED that this action be dismissed for failure to prosecute pursuant to Fed. R. Civ. Proc. 41(b) with prejudice as to Defendants Southern Health Partners and Nurse Herndon.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

November 8, 2016
Florence, South Carolina

The parties' attention is directed to the important information on the attached notice.